

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARÍA TORRES-PANTOJAS,

Defendant.

CRIMINAL: 16-314 (GAG)

REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY)

I. Procedural Background

On May 25, 2016, María Torres-Pantojas (hereinafter referred to as “defendant”), assisted and represented by counsel, waived her right to be charged by means of an indictment, consented to the filing of an information, and entered a guilty plea as to count one of the information. Count one charges, *inter alia*, that in or about the months of September and October 2011, in the District of Puerto Rico, and elsewhere within the jurisdiction of this court, the defendant knowingly and willfully combined, conspired, confederated and agreed with others to commit an offense contained in Chapter 63, of Title 18, of the United States Code, namely to knowingly execute a scheme and artifice to defraud and to obtain money from Banco Popular de Puerto Rico, which is a federally insured financial institution, as that term is defined in Title 18, United States Code, Section 20, and to obtain monies and funds owned by and under the custody and control of this financial institution, in violation of Title 18, United States Code, Section 1344 and 1349.

II. Consent to Proceed Before a Magistrate Judge

In open court the defendant was questioned as to the purpose of the hearing being held and was advised of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted under oath and that it was expected that her answers would be truthful; (c) the potential consequences

of lying under oath (such as a perjury charge); and (d) her right to have the entry of plea proceedings presided by a district judge instead of a magistrate judge. The defendant was also explained the differences between the appointment and functions of the two. The defendant consented to proceed before the undersigned magistrate judge.

III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

A. Rule 11(c)(1) Requirements

Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an 'understanding of the nature of the charge and consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the guilty plea. United States v. Cotal-Crespo, 47 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st Cir. 1991)). United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of her rights, defendant was advised of her right:

1. To remain silent at trial and be presumed innocent, since it is the government who has the burden of proving her guilt beyond a reasonable doubt.
2. To testify or not to testify at trial, and that no adverse inference could be made in relation to her decision not to testify.
3. To a speedy trial before a district judge and a jury, at which she would be entitled to see and cross examine the government witnesses, present evidence on her behalf, and challenge the government's evidence.
4. To have a unanimous verdict rendered by a jury of twelve persons which would have to be convinced of defendant's guilt beyond a reasonable doubt by means of admissible evidence.
5. To use the subpoena power of the court to compel the attendance of witnesses.

1 Upon listening to the defendant's responses, observing her demeanor and her speaking with her
2 attorney, that to the best of counsel's belief defendant had fully understood her rights, it is determined
3 that defendant is aware of her constitutional rights.

4 **C. Consequences of Pleading Guilty**

5 Upon advising defendant of her constitutional rights, she was further advised of the
6 consequences of pleading guilty. Specifically, defendant was advised that by pleading guilty and upon
7 having her guilty plea accepted by the court, she will be giving up the above rights and will be convicted
8 solely on her statement that she is guilty.

9 Furthermore, the defendant was admonished of the fact that by pleading guilty she would not
10 be allowed later on to withdraw her plea because she eventually might disagree with the sentence
11 imposed, and that if she violates the conditions of supervised release, that privilege could be revoked
12 and she could be required to serve an additional term of imprisonment. She was also explained that
13 parole has been abolished.

14 In response to further questioning, defendant was explained and she understood that if convicted
15 on count one she will face a term of imprisonment of not more than thirty (30) years, a fine not greater
16 than one million dollars (\$1,000,000.00), and a term of supervised release of not more than five (5)
17 years.

18 The defendant was advised that the ultimate sentence was a matter solely for the court to decide
19 in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon
20 her, she later could not withdraw her guilty plea for that reason alone. The defendant understood this.

21 The defendant acknowledged that at this stage no guarantees or promises as to the sentence to
22 be imposed had been made to her. The defendant was also explained what the supervised release term
23 means and was urged to cooperate with the United States Probation Office.

24 **D. Plea Agreement¹**

25 The parties have entered into a written plea agreement that, upon being signed by the
26 government, defense attorney and defendant, was filed and made part of the record. Defendant was
27 clearly warned and recognized having understood that:

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¹ "Plea agreement" refers to the agreement and its supplement.

1 1. The plea agreement is not binding upon the sentencing court.

2 2. The plea agreement is an agreement between the defendant, defense counsel and the
3 attorney for the government which is presented as a recommendation to the court in regards to the
4 applicable sentencing adjustments and guidelines, which are advisory.

5 3. The agreement provides a sentencing recommendation and/or anticipated sentencing
6 guideline computation, that can be either accepted or rejected by the sentencing court.

7 4. In spite of the plea agreement and any sentencing recommendation contained therein, the
8 sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the
9 maximum possible penalty prescribed by statute.

10 Defendant acknowledged having understood this explanation.

11 **E. Government's Evidence (Basis in Fact)**

12 The government presented a proffer of its evidence consistent with the version of facts of the
13 plea agreement with which the defendant concurred. Accordingly, it is determined that there is a basis
14 in fact and evidence to establish all the elements of the offense charged.

15 **F. Voluntariness**

16 The defendant accepted that no threats had been made to induce her to plead guilty and that she
17 did not feel pressured to plead guilty.

18 **G. Waiver of Appeal**

19 The defendant was explained, and she understood, that if the court accepts the plea agreement
20 and sentences her according to its terms, conditions and recommendations, she will be surrendering her
21 right to appeal the sentence and judgment in this case.

22 **IV. Conclusion**

23 The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of
24 Criminal Procedure, and has entered a plea of guilty as to count one of the information. After
25 cautioning and examining the defendant under oath and in open court, concerning each of the subject
26 matters mentioned in Rule 11, as described in the preceding sections, I find that defendant is competent
27 to enter this guilty plea, is aware of the nature of the offense charged and the maximum statutory
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1 penalties that the same carries, understands that the charge is supported by the government's evidence,
2 has admitted to every element of the offense charged, and has done so in an intelligent and voluntary
3 manner with full knowledge of the consequences of her guilty plea. Therefore, I recommend that the
4 court accept the guilty plea of the defendant and that the defendant be adjudged guilty as to count one
5 of the information.

6 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B). Any objections
7 to the same must be specific and must be filed with the Clerk of Court within fourteen (14) days of its
8 receipt. Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the report and
9 recommendation is a waiver of the right to review by the district court. United States v. Valencia-
10 Copete, 792 F.2d 4 (1st Cir. 1986).

11 SO RECOMMENDED.

12 In San Juan, Puerto Rico, this 26th day of May, 2016.

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14 s/Marcos E. López
15 U.S. MAGISTRATE JUDGE
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